

TRANSCRIPT OR REPORT

SUPREME COURT OF THE UNITED STATES

APRIL 11, 1906.

No. 16,345. N. 6.

FRANCES REBECCA FAMILTON, PLAINTIFF IN ERROR,

GRACE ABBIE B. BATHBONE,

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JULY 27, 1906.

(16,345.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 206.

FRANCES REBECCA HAMILTON, PLAINTIFF IN ERROR,

vs.

GRACE ABBIE B. RATHBONE.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Page.
Caption	1
Transcript from supreme court of the District of Columbia	1
Declaration	1
Notice to plead	4
Plea of defendants	4
Joinder of issue	4
<i>Nolle prosequi</i> as to Francis E. and Joseph Hamilton and as to the third and fourth counts of declaration	5
Judgment	5
Order for appeal	6
Citation on appeal	6
Memorandum of filing appeal bond	7
Order allowing bill of exceptions	7
Bill of exceptions	7
Testimony of Frances R. Hamilton	7
Deed, Calvert to Hamilton, February 20, 1879	8
Will of Lucy V. Elkin	10

	Page.
Bond and oath of Calvert as executor	11
Deed, Calvert to Elkin, April 29, 1872	12
Deed, Elkin to Calvert, April 29, 1872	13
Testimony of Grace A. B. Rathbone	15
Kate Ellis	16
Frances Rebecca Hamilton	16
Fred. G. Calvert	17
Deed, Quinter <i>et ux.</i> to Elkin, July 31, 1867	17
Testimony of Wm. Holmead	23
Mary J. Lowry	23
Fannie M. Calvert	24
Frances R. Hamilton	24
Mary Jane Hamilton	25
Grace A. B. Rathbone	26
A. A. Lipscomb	27
Judge's certificate to bill of exceptions	28
Clerk's certificate	29
Minutes of argument	29
Opinion	29
Judgment	34
Petition for writ of error	35
Affidavit of value	35
Order granting writ of error	36
Bond on writ of error	36
Writ of error	37
Citation and acceptance of service	37
Clerk's certificate	38

In the Court of Appeals of the District of Columbia.

FRANCES REBECCA HAMILTON, Appellant, }
 vs. } No. 554.
 GRACE ABBIE B. RATHBONE. }

a Supreme Court of the District of Columbia.

GRACE ABBIE B. RATHBONE, Plaintiff, }
 vs. } At Law. No. 31827a.
 FRANCES REBECCA HAMILTON, Defendant. }

UNITED STATES OF AMERICA, {
 District of Columbia. }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration.*

Filed June 13, 1891.

In the Supreme Court of the District of Columbia, June 13th, 1891.

GRACE ABBIE B. RATHBONE, Plaintiff, }
 vs. } At Law. No. 31827.
 FRANCIS E. HAMILTON, FRANCES REBECCA }
 HAMILTON, & JOSEPH HAMILTON, Defendants. }

1st. The plaintiff sues the defendants to recover the one undivided moiety or third part, the whole into three equal parts to be divided, of and in all that certain piece and parcel of land, mesusage, and appurtenances, situate in the District of Columbia, beginning on the west line of the Fourteenth Street or Piney Branch road at the northeast corner of a small part of lot numbered four of the division of the Pleasant Plains tract, which small part was sold and conveyed by Thomas J. Quinter and wife to Julia C. Baker by a deed recorded in Liber 533, fol. 67, one of the land records of the said District, and running thence with the north line of the said Baker's lot north fifty-eight and one-half degrees west thirty and one-tenth perches; thence north twenty degrees east five and forty-six one-hundredths perches; thence south

fifty-eight and one-half degrees east twenty-eight and fifty-two one-hundredths perches to the west line of said Fourteenth Street or Piney Branch road, and thence with the west line of said road south five degrees west six and one-tenth perches to the place of beginning, being the same premises sold and conveyed by Thomas J. Quinter and wife to Abram Elkin, Jr., by a deed recorded in Liber 532, fol. 234, in which undivided third *undivided* part the plaintiff claims the fee-simple and of which the plaintiff was seized and possessed on the first day of March, one thousand eight hundred and eighty-five, when the defendants entered the same and unlawfully ejected the plaintiff therefrom, and have ever since detained the same from the plaintiff, and the plaintiff claims the possession of the said one undivided third part or moiety of said piece or parcel of land, messuage, and appurtenances and costs of suit.

2. And the plaintiff sues the defendants to recover the one undivided moiety or third part, the whole into three equal parts to be divided, of and in all that other certain piece or parcel of land, messuage, and appurtenances situate in the District of Columbia, beginning on the west line of the Fourteenth Street or Piney Branch road, at the northeast corner of a small part of lot numbered four of the Pleasant Plains tract, which small part was sold and conveyed by Thomas J. Quinter and wife to Julia C. Baker by deed recorded in Liber 533, fol. 67, one of the land records of said District, and running thence with the north line of said Baker's lot north fifty-eight and one-half degrees west thirty and one-tenth perches; thence north twenty degrees east five and forty-six one-hundredths perches; thence south fifty-eight and one-half degrees east twenty-eight and fifty-two one-hundredths perches to the west line of said Fourteenth Street or Piney Branch road, and thence with the west

3. line of said road south five degrees west six and one-tenth perches to the place of beginning, being the same premises sold and conveyed by Thomas J. Quinter and wife to Abram Elkin, Jr., by deed recorded in Liber 532, fol. 234, in which undivided third part the plaintiff claims the fee-simple and of which the plaintiff was lawfully seized and possessed on the first day of June, one thousand eight hundred and ninety-one, when the defendants entered the same and unlawfully ejected the plaintiff therefrom and have ever since detained the same from the plaintiff; and the plaintiff claims the possession of the said one undivided third part or moiety of said piece and parcel of land, messuage, and appurtenances, with costs of suit.

3d. And the plaintiff sues the defendants for that the defendants heretofore, to wit, on the first day of March, one thousand eight hundred and eighty-five, with force and arms broke and entered into the one undivided third part of the messuage, tenement, and appurtenances of the plaintiff, situate in the District of Columbia and beginning on the west line of the Fourteenth Street or Piney Branch road at the northeast corner of a small part of lot numbered four of the Pleasant Plains tract, which small part was sold and conveyed by Thomas J. Quinter and wife to Julia C. Baker by deed

recorded in Liber 533, fol. 67, one of the land records of said District, and running thence with the north line of said Buker's lot north fifty-eight and one-half degrees west thirty and one-tenth perches; thence north twenty-eight degrees east five and forty-six one-hundredths perches; thence south fifty-eight and one-half degrees east twenty-eight and fifty-two one-hundredths perches to the west line of said Fourteenth Street or Piney Branch road, and thence south 4 five degrees west six and one-tenth perches to the place of beginning, being the same premises sold and conveyed by Thomas J. Quinter and wife to Abram Elkin, Jr., by deed recorded in Liber 532, fol. 234, one of the land records of said District, and expelled, put out, and removed the plaintiff from her possession and occupation of the said undivided one-third part of said messuage, tenement, and appurtenances, and kept and continued her so expelled and removed for a long time, to wit, from the day and year aforesaid, and from thence hitherto and during all that time did receive to their own use all the issues and profits and the beneficial use and occupation of the said undivided one-third part of said messuage, tenement, and appurtenances, being of great value, to wit, of the monthly value of fifteen dollars, and whereby the plaintiff was deprived and kept from using, renting, and selling the same. Wherefore the plaintiff claims the sum of three thousand dollars besides costs of suit.

4th. And the plaintiff sues the defendants for that the defendants heretofore, to wit, on the first day of June, one thousand eight hundred and ninety-one, with force and arms broke and entered into that other one undivided third part of the messuage, tenement, and appurtenances of the plaintiff situate in the District of Columbia and beginning on the west line of the Fourteenth Street or Piney Branch road at the northeast corner of a small part of lot numbered four of the Pleasant Plains tract, which small part was sold and conveyed by Thomas J. Quinter and wife to Julia C. Buker by deed recorded in Liber 533, fol. 67, one of the land records of said District, and running thence with the north line of said Buker's 5 lot north fifty-eight and one-half degrees west thirty and one-tenth perches; thence north twenty-eight degrees east five

and forty-six one-hundredth- perches; thence south fifty-eight and one-half degrees east twenty-eight and fifty-two one-hundredth-perches to the west line of said Fourteenth Street or Piney Branch road, and thence south five degrees west six and one-tenth perches to the place of beginning, being the same premises sold and conveyed by Thomas J. Quinter and wife to Abram Elkin, Jr., by deed recorded in Liber 532, fol. 234, one of the land records of said District, and expelled, put out, and removed the plaintiff from her possession and occupation of said undivided one-third part of said messuage, tenement, and appurtenances, and kept and continued her so expelled and removed for a long time, to wit, from the day and year aforesaid, and from thence hitherto and during all that time did take and receive to their own use all the issues and profits and the beneficial use and occupation of the said undivided one-third part of the said messuage, tenement, and appurtenances, being of

great value, to wit, of the monthly value of fifteen dollars, and whereby the plaintiff was deprived and kept from using, renting, and selling the same. Wherefor the plaintiff claims the sum of three thousand dollars besides costs of suit.

H. G. MILANS,
Attorney for Plaintiff.

Notice to Plead, &c.

The defendants are to plead hereto on or before the first day of the first special term of the court occurring twenty days after service hereof; otherwise judgment.

H. G. MILANS,
Att'y for Plff.

6

Plea for Defendants.

Filed July 2, 1891.

In the Supreme Court of the District of Columbia, the Second Day of July, 1891.

GRACE ABBIE B. RATHBONE, Plaintiff, }
vs.
FRANCIS E. HAMILTON, FRANCES REBECCA } At Law. No. 31827.
Hamilton, and Joseph Hamilton, Defendants. }

Now come the defendants and for plea to the plaintiff's declaration say they are not guilty as alleged.

A. A. LIPSCOMB,
Att'y for Defendants.

Joiner of Issue.

Filed July 3, 1891.

In the Supreme Court of the District of Columbia, the Third Day of July, 1891.

GRACE ABBIE B. RATHBONE, Plaintiff, }
vs.
FRANCIS E. HAMILTON, FRANCES REBECCA } At Law. No. 31827.
Hamilton, and Joseph Hamilton, Defendants. }

7 The plaintiff joins issue upon the defendants' plea filed
July 2d, 1891.

H. G. MILANS,
Attorney for the Plaintiff.

Nolle Prosequi as to 2 Def'ts and 2 Counts.

Filed January 12, 1894.

In the Supreme Court of the District of Columbia.

GRACE A. B. RATHBONE

v.

FRANCIS E. HAMILTON, FRANCES R. HAMILTON, & JOSEPH HAMILTON.

} At Law. No. 31827.

And now comes the plaintiff, by her attorney, Henry G. Milans, and says that she enters a *nolle prosequi* in this action as to the defendants Francis E. Hamilton and Joseph Hamilton, and will not further prosecute her suit against said defendants; and also further says that as to the third and fourth counts of the plaintiff's declaration, in which she claims to recover *mesne profits*, she also enters a *nolle prosequi* and will not further prosecute her said action against any of said defendants.

HENRY G. MILANS,
Attorney for Plaintiff.

8

MONDAY, November 25, 1895.

Session resumed pursuant to adjournment, Mr. Justice McComas presiding.

GRACE ABBIE B. RATHBONE, Plaintiff, }
v. } At Law. No. 31827.
FRANCES REBECCA HAMILTON, Def't.

Upon hearing the plaintiff's motion for judgment upon the verdict rendered in the above-entitled case on the 19th day of November, 1895, it is considered that said motion be granted. Therefore it is considered that the plaintiff recover against said defendant possession of the one undivided moiety or third part, the whole into three equal parts to be divided, of and in all that certain piece and parcel of land, messuage, and appurtenances, situate in the District of Columbia, beginning on the west line of the Fourteenth Street or Piney Branch road, at the northeast corner of a small part of lot numbered four of the division of the Pleasant Plains tract, which small part was sold and conveyed by Thomas J. Quinter and wife to Julia C. Baker by a deed recorded in Liber 533, fol. 67, one of the land records of the said District, and running thence with the north line of the said Baker's lot north fifty-eight and one-half degrees west thirty and one-tenth perches; thence north twenty degrees east five and forty-six one-hundredth perches; thence south fifty-eight and one-half degrees east twenty-eight and fifty-two one-hundredth perches to the west line of said Fourteenth Street or

9 Piney Branch road, and thence with the west line of said road south five degrees west six and one-tenth perches to the place of beginning, together with her costs of suit, to be taxed by the clerk, and have execution thereof.

Order for Appeal.

Filed November 29, 1895.

In the Supreme Court of the District of Columbia, the 29 Day of November, 1895.

GRACE ABBIE B. RATHBONE }
vs. } At Law. No. 31827.
FRANCES REBECCA HAMILTON. }

The clerk of said court will please enter an appeal on behalf of the defendant from the judgment in the above-entitled cause and issue a citation to the plaintiff.

A. S. WORTHINGTON,
A. A. LIPSCOMB,
Attorneys for Defendant.

10 In the Supreme Court of the District of Columbia.

GRACE ABBIE B. RATHBONE }
vs. } At Law. No. 31827.
FRANCES REBECCA HAMILTON. }

The President of the United States to Grace Abbie B. Rathbone,
Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 29th day of November, 1895, wherein Frances Rebecca Hamilton is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 29th day of November, in the year of our Lord one thousand eight hundred and ninety-five.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 29th day of November, 1895.

HENRY G. MILANS,
Attorney for Appellee.

11

Memorandum.

December 6, 1895.—Bond for appeal filed.

Memorandum.

January 6, 1896.—October term, 1895, prolonged to settle bill of exceptions.

WEDNESDAY, February 5, 1896.

Session resumed pursuant to adjournment, Mr. Justice McComas presiding.

* * * * *

GRACE A. B. RATHBONE }
 v. } At Law. No. 31827.
 FRANCES R. HAMILTON. }

Now comes here the defendant, by her attorneys, and tenders to the court here her bill of exceptions taken during the trial of this cause and prays that it may be duly signed, sealed, and made part of the record now for then; which is done accordingly.

12

Bill of Exceptions.

Filed February 5, 1896.

In the Supreme Court of the District of Columbia.

GRACE A. B. RATHBONE }
 vs. } At Law. No. 31827.
 FRANCES R. HAMILTON. }

Be it remembered that this cause came on to be tried before Honorable Louis E. McComas, justice, and a jury on the 13th day of November, A. D. 1895; whereupon the plaintiff, to maintain the issues on her part joined, called as a witness the defendant, FRANCES R. HAMILTON, who, being duly sworn, testified in substance as follows:

I reside on 14th street extended, on the property in dispute, and have been in possession of it for sixteen years, and am in possession of it now.

Q. On what claim of title did you go into possession?

A. I went in under all claim of title. I bought it and paid for it, as I thought.

Q. Who did you buy the property from?

A. From Mr. Calvert.

Q. You got a deed from him?

A. Yes; it was supposed he could give a deed.

Q. You went into possession under that deed?

A. Yes, sir; I went into possession under all deeds.

On cross-examination the witness testified as follows:

Q. Do you mean to say you claim title to that property only under that deed?

13 A. No, sir; I claim title to all deeds. I bought it and paid for it. I ought to have got a rightful title, if I didn't.

Q. You do not limit your claim of title to that deed, then?

A. No; not exactly.

Redirect examination:

Q. What other claim of title have you got besides the deed from Calvert?

A. The claim of title that I paid my money for it. I paid cash money.

Recross-examination:

I made the money in the milk business. I employed a lawyer and paid my money on the faith of what he told me, and I never got any of the money back.

Counsel for the plaintiff thereupon offered in evidence, for the sole purpose of showing a common source of title, the following deed, to wit:

Ex'd. Del. to J. M. } Fred'k G. Calvert, ex'r, } Recorded Feb. 20,
C. Carusi M'ch } to } 1879, 1 p. m.
21, 1879. R. R. } Frances Rebecca Hamilton. } Deed.

This indenture made this 20th day of February, in the year of our Lord eighteen hundred and seventy-nine between Frederick G. Calvert, executor of the city of Washington, District of Columbia, of the first part, and Frances Rebecca Hamilton, of the same place, of the second part, witnesseth.

14 Whereas Lucy Victoria Elkin, deceased, late of said city and District, by her last will and testament bearing date on the 22nd day of April, A. D. 1876, duly proved and admitted to record in the supreme court of the District of Columbia holding a special term, directed the real estate personal and mixed property, owned and held by her to be sold and after deducting her funeral and other necessary expenses to pay the legacies as therein provided out of the proceeds of said sale, constituting Frederick G. Calvert sole executor, as will more fully and at large appear by reference to said last will and testament on file in said supreme court, and recorded among the records of said — in Will Book No. 15 folio 349 and to which reference is hereby made.

Now, therefore this indenture witnesseth that said party of the first part executor as aforesaid for and in consideration of the premises and further the sum of fifteen hundred dollars in lawful money of the United States to him in hand paid by the said party of the second part at and before the sealing and delivery of the presents the receipt whereof is hereby acknowledged has granted, bargained, sold, aliened, enfeoffed, released and conveyed, and does by these

presents grant bargain sell alien enfeoff release and convey unto the said party of the second part her heirs and assigns forever the following-described real estate situate lying and being in the county of Washington District of Columbia and known as a part of a tract of land called Pleasant Plains and beginning for the same on the west side of Fourteenth Street road at the northeast corner of a part of the same tract heretofore sold and conveyed by Thomas J. Quinter to Julia C. Baker and running thence with said Baker's line nort'

to John C. Baker and running thence with said Baker's line north
fifty-eight and one-half degrees west thirty and ten-hundredths
15 perches (N. $58\frac{1}{2}^{\circ}$ west 30.10 pcs.) thence north twenty degrees
east five and forty-six hundredths perches (N. 20° E. 5.46
prs.) thence south fifty-eight and one-half degrees east twenty-eight
and fifty-two hundredths perches (S. $58\frac{1}{2}^{\circ}$ E. 28.52 prs.) thence south
five degrees west six and one-tenth perches (S. 5° W. 6.1 prs.) to the
place of beginning containing one acre of ground; the ground
hereby intended to be conveyed by the above-described being the
whole of said land that was conveyed to Abram Elkin Jr., by Thos.
J. Quinter and wife by deed bearing date July 31, A. D. 1867 and
recorded in Liber E. C. E. 8 folio 234 *et seq.*, one of the land records
of the county of Washington and District of Columbia, together
with all the improvements, ways, easements, rights, privileges ap-
purtenances and hereditaments to the same belonging or in any-
wise appertaining and all the remainders, reversions, rents, issues
and profits thereof; and all the estate, right, title, interest, claim
and demand whatsoever either at law or in equity of the said party
of the first part, of, in, to or out of the said piece or parcel of land
and premises. To have and to hold the said piece or parcel of land
and premises with the appurtenances, unto the said party of the
second part her heirs and assigns to her sole use, benefit and behoff
forever. And the said party of the first part for himself and his
heirs, shall and will at any and at all times hereafter upon the re-
quest and at the cost of the said party of the second part her heirs
and assigns make and execute all such other deed or deeds or other
assurance in law for the more certain and effectual conveyance of
the said piece or parcel of land and premises and appurte-
16 nances unto the said party of the second part her heirs or
assigns as the said party of the second part her heirs or assigns
or her counsel learned in the law shall advise devise or require.

In testimony whereof the said party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

FRED. G. CALVERT, *Executor.* [SEAL.]

Signed, sealed, and delivered in the presence of—
CHAS. W. HANDY.

DISTRICT OF COLUMBIA, { *ss:*
Washington County,

I, Charles W. Handy, a notary public in and for the District and county aforesaid, do hereby certify that Frederick G. Calvert, party to a certain deed bearing date on the twentieth day of February, A. D.

1879, and hereto annexed, personally appeared before me in said county, and the said Frederick G. Calvert being personally well known to me to be the person who executed said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this twentieth day of February, A. D. 1879.

CHAS. W. HANDY, [NOTARIAL SEAL.]
Notary Public.

17 The plaintiff, further to maintain the issues or her part joined, offered in evidence, for the sole purpose of showing that the plaintiff and the defendant claim title from the same common source, the record of the paper purporting to be the last will and testament of Lucy V. Elkin, as follows:

In the name of God, amen.

I, Lucy Victoria Elkin, being weak in body, but of a sound and disposing mind, do make this my last will and testament hereby revoking all others heretofore made by me.

I first direct that the real estate, and personal and mixed property now owned and held by me sold, and after deducting my funeral and other necessary expenses I give and bequeath to my dear husband Abram Elkin, the sum of one thousand (\$1,000) dollars out of the proceeds of said sale.

I, then direct that the remaining portion of the money received from said sale be divided in equal shares between my children, viz: Grace Abby Blanche, Lucy Caroline, Charles Calvert, and Harry Lowry Elkin, and I do hereby constitute and appoint Fred. G. Calvert my sole executor of this my last will and testament.

In witness whereof, I hereunto subscribe my name this twenty-second day of April in the year of our Lord A. D. one thousand eight hundred and seventy-six.

LUCY VICTORIA ELKIN.

We hereby certify that the above is the signature of Lucy Victoria Elkin, who, in our presence, we being in the presence of each other, and after having said paper read and explained to her, signed and acknowledged the same to be her act and deed, and requested

18 us to witness the same this twenty-second day of April, in the year of our Lord one thousand eight hundred and seventy-six.

CHARLES CALVERT.
MARY J. LOWRY.
ELIZABETH R. RILEY.

The plaintiff further offered in evidence the bond of the executor, Frederick G. Calvert, for the purpose of showing that he duly qualified, as follows:

In the Supreme Court of the District of Columbia, Holding a Special Term.

DISTRICT OF COLUMBIA, }
County of Washington, } To wit:

Know all men by these presents that we, Fred. G. Calvert, Charles Calvert, and Grace M. Hurdle, of Washington county aforesaid, are held and firmly bound unto the United States of America in the full sum of one hundred dollars, current money of said United States, to be paid to the said United States, their certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators in and for the whole, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 8th day of June, in the year of our Lord one thousand eight hundred and seventy-six.

19 Whereas the above-bounden Fred. G. Calvert is about taking out from the supreme court of the District of Columbia letters testamentary on the personal estate of Lucy V. Elkin, late of Washington county aforesaid, deceased:

The condition of the above obligation is such that if the above-bounden Fred. G. Calvert shall well and truly perform the office of executor of Lucy V. Elkin, late of Washington county aforesaid, deceased, according to law, and shall in all respects discharge the duties of him required by law as executor aforesaid without any injury to any person interested in the faithful performance of the said office, then the above obligation shall be void; it is otherwise to be in full force and virtue in law.

FRED. G. CALVERT.	[L. S.]
CHAS. CALVERT.	[L. S.]
GRACE M. HURDLE.	[L. S.]

Signed and sealed in the presence of—

A. WEBSTER.

Approved by the court:

A. B. OLIN.

Test: A. WEBSTER,

Register of Wills.

DISTRICT OF COLUMBIA, }
Washington County, } To wit:

I do solemnly swear that I will well and truly administer the goods, chattels, and personal estate of Lucy V. Elkin, late of 20 Washington county, in the District of Columbia, deceased; will give a just and true account of my administration when thereto I shall be lawfully called, so help me God.

FRED. G. CALVERT, Executor.

Sworn and subscribed before me this 8th day of June, A. D. 1876.

Test:

A. WEBSTER.

Register of Wills.

The plaintiff further offered in evidence the record of a deed from Frederick G. Calvert to Lucy V. Elkin, as follows:

Ex. Del. to A. Elkin { F. G. Calvert *et ux.* } Recorded May 7, 1872,
 April 24, '76. R. R. { to Lucy V. Elkin. } 12 m. Deed.

This indenture made this twenty-ninth day of April in the year of our Lord one thousand eight hundred and seventy-two between Frederick G. and Fannie M. Calvert his wife, of the city and county of Washington, in the District of Columbia, of the first part and Lucy V. Elkin of the same city and county of the second part.

Witnesseth that the said party of the first part for and in consideration of the sum of five dollars in lawful money of the United States to them in hand paid by the said party of the second part, at and before the said sealing and delivery of these presents the receipt whereof is hereby acknowledged have granted bargained sold aliened enfeoffed released and conveyed and do by these presents grant bargain sell alien, enfeoff, release and convey unto her the said party of the second part her heirs and assigns forever, all that certain piece or parcel of land situate and being in the said county of Washington, and being part of a tract of land called Pleasant Plains, and beginning for the part hereby intended to be conveyed on the west side of Fourteenth Street road, running thence with said Baker's line north forty-eight and one-half degrees west thirty and ten-hundredths perches (N. $58\frac{1}{2}^{\circ}$ W. 30.10 prs.) thence north twenty degrees east five and forty-six hundredths perches (N. 20° E. 5.46 prs.) thence south fifty-eight and one-half degrees east twenty-eight and fifty-two hundredths perches (S. $58\frac{1}{2}^{\circ}$ E. 28.52 prs.) and thence south five degrees west six and ten-hundredths perches (S. 5° W. 6.10 prs.) to the beginning containing one acre of land as shown and described in the annexed plat thereof: Together with all the improvements, ways, easements rights privileges and appurtenances to the same belonging or in anywise appertaining and all the remainders reversions rents issues and profits thereof and all the estate right title interest claim and demand whatsoever whether at law or in equity of the said parties of the first part of in to or out of the said piece or parcel of land and premises. To have and to hold the said piece or parcel of land and premises with the appurtenances unto the said party of the second part, her heirs and assigns to and for her and their sole use benefit and behoof forever. And the said parties of the first part for themselves their heirs executors and administrators do hereby covenant promise and agree to and with the said party of the second part her heirs and assigns that the said parties of the first part and their heirs shall and will warrant and forever defend the said piece or parcel of land and premises with the appurtenances unto the said party of the second part her heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof by from under or through him the said party hereto of the first part, and against all persons whomsoever.

And further that the said party of the first part and his heirs shall and will at any and at all times hereafter upon the request and at the cost of the said party of the second part her heirs or assigns make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances unto the said party of the second part her heirs or assigns that the said party of the second part, her heirs or assigns or her counsel learned in the law shall advise, devise or require.

In testimony whereof the said party of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

FREDERICK G. CALVERT. [SEAL]
FANNIE M. CALVERT. [SEAL]

Signed, sealed, and delivered in the presence of—having been first duly stamped—

T. DRURY.

23 DISTRICT OF COLUMBIA, { ss :
County of Washington,

I, T. Drury, a justice of the peace in and for the county aforesaid, do hereby certify that Frederick G. Calvert and his wife, Fannie M. Calvert, parties to a certain deed bearing date on the twenty-ninth day of April, A. D. 1872, and hereto annexed, personally appeared before me in the county aforesaid, the said Frederick G. Calvert and his wife, Fannie M. Calvert, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Fannie M. Calvert, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this 29th day of April, A. D. 1872.

T. DRURY, J. P. [SEAL]

The plaintiff further offered in evidence the record of a deed from Abram Elkin to Frederick G. Calvert, as follows:

Ex. Del. to A. Elkins { Abram Elkin *et ux.* } Deed. Recorded May
April 24, '76. { to } 7, 1872, 12 m.
 { Fred. G. Calvert. }

This indenture made this twenty-ninth day of April in the year of our Lord one thousand eight hundred and seventy-two
24 between Abram and Lucy V. Elkin, his wife of the city and county of Washington in the District of Columbia of the first part and Fred. G. Calvert of the same city and county of the second part witnesseth: That the said parties of the first part for and in consideration of the sum of five dollars in lawful money of

the United States to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged have granted bargained sold aliened enfeoffed released and conveyed and do by these presents grant bargain sell alien enfeoff and convey unto the said party of the second part his heirs and assigns forever all that certain piece or parcel of land situate and being in the said county of Washington and being part of a tract of land called "Pleasant Plains" and beginning for the part hereby intended to be conveyed on the west side of Fourteenth Street road running thence with Baker's line north fifty-eight and one-half degrees west thirty and ten-pundredths perches, (N. 58 $\frac{1}{2}$ ° W. 30.10 prs.) thence north twenty degrees east five and forty-six hundredths perches (N. 20° E. 5.46 prs.) thence south fifty-eight and one-half degrees east twenty-eight and fifty-two hundredths perches (S. 58 $\frac{1}{2}$ ° E. 28.52 prs.) and thence south five degrees west six and one-tenth perches (S. 5° W. 6.10 perches) to the beginning, containing one acre of land as shown & described in the annexed plat thereof. Together with all the improvements ways easements rights privileges and appurtenances to the same belonging or in anywise appertaining and all the remainders reversions rents issues and profits thereof and all the estate right title interest claim and demand whatsoever whether at law or in equity of the said parties of the
25 first part of in to or out of the said, piece or parcel of land and premises. To have and to hold the said piece or parcel of land and premises with the appurtenances unto the said party of the second part his heirs and assigns to and for his and their sole use benefit and behoof forever. And the said parties hereto of the first part for themselves their heirs executors and administrators do hereby covenant promise and agree to and with the said party of the second part, his heirs and assigns, that they the said parties of the first part and their heirs shall and will warrant and forever defend the said piece or parcel of land and premises with the appurtenances unto the said party of the second part his heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof by from under or through them the said parties of the first part, and against all persons whomsoever. And further that the said parties of the first part and their heirs shall and will at any and at all times hereafter upon the request and at the cost of the said party of the second part his heirs or assigns make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances unto the said party of the second part his heirs and assigns as the said party of the second part his heirs or assigns or his counsel learned in the law shall advise, devise or require.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first herein-before written.

ABRAM ELKIN, JR. [L. s.]
LUCY V. ELKIN. [L. s.]

26 Signed, sealed, and delivered in the presence of, having
been first duly stamped—
T. DRURY.

DISTRICT OF COLUMBIA, }
County of Washington, }^{ss:}

I, T. Drury, a justice of the peace in and for the county aforesaid, do hereby certify that Abram Elkin, Jr., and his wife, Lucy V. Elkin, parties to a certain deed bearing date on the twenty-ninth day of April, A. D. 1872, and hereto annexed, personally appeared before me in the county aforesaid, the said Abram Elkin and Lucy V., his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Lucy V. Elkin, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this 29th day of April, A. D. 1872.

T. DRURY, J. P. [SEAL.]

The plaintiff, further to maintain the issues on her part joined, appeared as a witness on her own behalf and, being duly sworn, testified as follows:

My name is Grace A. B. Rathbone. My father was Abram Elkin. My mother was Lucy Victoria Elkin. My mother died May 27 3, 1876. I was born March 11, 1864. I was 12 years old when my mother died. I had a sister, Lucy Caroline Elkin, who was born September 3, 1867. I was the oldest child. After me came Lucy Caroline. The next child was Charles Calvert Elkin, born January 2, 1870. The next was Harry Lowry Elkin, born July 15, 1875. Only one of the children besides myself is now living, and that is Charles Calvin Elkin. Harry Lowry Elkin died February 2, 1885. Lucy died in March, 1892. Harry was between 9 and 10 years of age at his death. Lucy was 22 years old when she died. The land in dispute is on the west side of the Fourteenth Street road, a square or two beyond the terminus of the Fourteenth Street cars. I lived on the property for several years when I was a little girl. I saw my father last in June, 1876, after my mother's death. I had a talk with him then. I have never seen him since, and have never heard from him. I have inquired to ascertain his whereabouts. I have written to his father. The latter sent word that he knew nothing of him. My lawyers have inquired for him. My father had no brothers or sisters, and I never knew of any uncles or aunts of his. My father's father was living when I wrote him about a year ago. I don't know whether my father is living or dead.

On cross-examination the witness stated:

After my mother's death I lived with my Grandfather Calvert;

his name was Charles Calvert. I was with him when he died, in 1880. Afterwards I lived with his daughter, Mrs. Lowry, until I was married. We were all at grandfather's house 28 when my mother died. We remained there and when he died my aunt moved, and I still stayed with her. At that time Mrs. Lowry's husband was dead. I know Mr. Calvert, my mother's brother. I never lived with him. He lived on 20th street when I lived with Mrs. Lowry.

Q. During all these years who supported you?

A. I had to take what I could get most of the time. Some of the time I was told to go to him and I went to him. I was usually sent away without getting a thing. I had to beg for what I wanted.

Once in a while I got things from him. I never got anything much. I was married November 7, 1888. My husband is employed in a private pension office.

The plaintiff further offered as a witness KATE ELLIS, who, being duly sworn, testified as follows:

I live in Baltimore. I knew Abram Elkin and Mrs. Elkin. I was present at their marriage, on April 15, 1863, by the Rev. Dr. Sunderland, in Washington, D. C. I was raised in Mr. Charles Calvert's family. I was not related to the family. They raised me since I was six years old. I left the family in 1873, when I married. I attended Mrs. Elkin's funeral. Mr. Elkin was there. I saw him last on June 17, 1876. Prior to that time he frequently came to my house. I never saw him after June 17, 1876, and never heard from him. I inquired as to his whereabouts. No member of his family, to my knowledge, ever heard from him. I inquired as to his whereabouts by letter and postal and received the following answer:

“DEAR SIR: No person by the name you mention has resided in this city for thirty years. The Calverts, of Washington, can perhaps inform you. If it should be the one I knew, he is not worth looking at.

Yours,

S. ELKIN.”

The gentleman who wrote that letter was Solomon Elkin, Abram Elkin's father.

The plaintiff next called as a witness FRANCES REBECCA HAMILTON, the defendant, who, being duly sworn, testified—

That she went into possession of the property in 1879; that she never saw Mr. Elkin since 1879 and not for two or three years before that. He was never out to the property after I bought it. He has never asserted any claim of title to the property, so far as I know, and never paid any taxes on it. I was in possession of this property at the time this suit was brought, in 1891.

Q. Did you at that time intend to retain possession of it?

A. If I could keep it, but I did not want to go into law. I bought the place and paid for it and expected to get a rightful title to it. I

paid the taxes on the property for the sixteen years that I have been there.

And counsel for the plaintiff thereupon announced their case closed.

And the defendant, to maintain the issues on her part joined, called as a witness FRED. G. CALVERT, who, being duly sworn, testified as follows:

30 I have lived in Washington for about 15 years. I am the brother of Lucy Elkin. She was brought up at my father's house on 19th street. After my father died my sister moved away and took the plaintiff with her. I knew Mr. and Mrs. Elkin during their married life. They lived at Mount Pleasant. I saw them occasionally. I knew when it was purchased from Mrs. Quinter.

Counsel for the plaintiff, with the consent of counsel for the defendant, here offered in evidence deed from Thomas J. Quinter *et ux.* to Abram Elkin, as follows:

This indenture made this thirty-first day of July in the year of our Lord one thousand eight hundred and sixty-seven between Thomas J. Quinter and Ada A. Quinter (late Holmead) his wife, of the city and county of Washington in the District of Columbia of the first part and Abram Elkin, Junior of the same city and county of the second part witnesseth that the said parties of the first part for and in consideration of the sum of twelve hundred dollars in lawful money of the United States to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, and sold aliened enfeoffed, released and conveyed and do by these presents grant bargain and sell alien enfeoff release and convey unto the said party of the second part, his heirs and assigns forever all that certain piece or parcel of land situate and being in the said county 31 of Washington and being part of a tract of land called

Pleasant Plains and beginning for the parcel hereby intended to be conveyed on the west side of the Fourteenth Street road at the northeast corner of a part of the same tract recently sold and conveyed by said parties hereto of the first part to Julia C. Baker and running thence with said Baker's line north fifty-eight and one-half degrees west thirty and ten-hundredths perches (N. $58\frac{1}{2}$ W. 30.10 pr.) thence north twenty degrees east five and forty-six hundredths perches (N. 20° E. 5.46 pr.) thence south fifty-eight and one-half degrees east twenty-eight and fifty-two hundredths perches (S. $58\frac{1}{2}^{\circ}$ E. 28.52 —) and thence south five degrees west six and one-tenth perches (S. 5 W. 6.1 pr.) to the beginning, containing one acre of land as shown and described in the annexed plat thereof the same

being part of the land allotted to said Ada A. Quinter in the division of the estate of her deceased father, William Holmead: Together with all the improvements ways easements rights privileges and appurtenances to the same belonging or in anywise appertaining and all the remainders reversions rents issues and profits thereof, and all the estate right title interest claim and demand either at law or in equity or otherwise however of the said party of the first part, of, in, to or out of the said piece or parcel of land and premises to have and to hold the said piece and parcel of land and premises and appurtenances unto the said party of the second part his heirs and assigns to and for his and their sole use benefit and behoof forever. And the said parties hereto of the first part for themselves, their heirs executors and administrators do hereby covenant promise and agreed to and with the said party of the second part, his
 32 heirs and assigns that they the said parties of the first part and their heirs shall and will warrant and forever defend the said land and premises and appurtenances unto the said party of the second part his heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof by from under or through them the said parties hereto of the first part and against all persons whomsoever and further that they the said parties of the first part and their heirs shall and will at any and at all times hereafter upon the request and at the cost of the said party of the second part his heirs and assigns make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances unto the said party of the second part, his heirs or assigns as the said party of the second part, his heirs or assigns or his or their counsel learned in the law shall advise, devise or require.

In testimony whereof the said parties of the first part have hereunto set *his* hands and seals the day and year first hereinbefore written.

THOMAS J. QUINTER. [SEAL.]
 ADA A. QUINTER. [SEAL.]

Signed, sealed, and delivered in the presence of—

JOHN D. BLOOR.

JOHN S. HOLLINGSHEAD.

33 DISTRICT OF COLUMBIA, }
 County of Washington, }
 }⁸⁸:

I, John S. Hollingshead, a notary public in and for the county aforesaid, in the said District of Columbia, do hereby certify that Thomas J. Quinter and Ada A. Quinter, his wife, parties to a certain deed bearing date on the — day of —, A. D. 1867, and hereto annexed, personally appeared before me, in the county aforesaid, the said Thomas J. Quinter and Ada A. Quinter, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed;

and the said Ada A. Quinter, the wife of the said Thomas J. Quinter, being examined by me privily and apart from her husband and having the deed aforesaid fully explained to her, she acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this thirty-first day of July, A. D. 1867.

JOHN S. HOLLINGSHEAD,
Notary Public.

[NOTARIAL SEAL.]

Plat attached.

The witness thereupon proceeded to testify as follows: I was the executor of my sister's will and directed to sell her real estate. I sold it to the defendant for \$1,500.00. She paid me the money, and I used it for the support of the children.

I gave some of it to Mr. Elkin. He came to me and

34 wanted to borrow some money, and said that he was not willing to wait for the thousand dollars. I gave him

something over \$200.00. This was before the sale was made. This was shortly after the death and burial of his wife. He said his wife had given him money towards paying for the property; that he wanted to get something to get out of town. I used the proceeds of the sale in buying clothing for the children, in paying board, &c. I bought dresses and clothing for the plaintiff and took receipts in a great many instances. The witness thereupon produced receipts for money expended for the children of Abram Elkin, Jr., amounting to \$598.70, and proceeded as follows: She knew that I sold the property. I have no doubt she did. She told me that she knew I had sold the property. She asked me for what she was entitled to.

When she came to me for clothing and necessaries she told me that I had sold the property and she wanted the clothes to wear, or words to that effect. She knew that I had sold the property, and that she was entitled to money nor clothing, and in pursuance of such rights I made these payments for her that are evidenced by these bills. I never had any money upon which the plaintiff had any claim except this. My sister's funeral expenses were paid by me. While

the plaintiff was living with Mrs. Lowry I frequently gave her money towards paying her board. When Abram Elkin married my sister he was a Government clerk in the Treasury Department; after leaving there he sold peanuts on the street for over a year; after that he had no business. He conveyed this property to his wife through me in 1872. He was neglecting his family there, and people were coming to him with bills. He said

he wanted to make the property over to his wife. That

35 she had helped him to pay for it or given what money

she had. He wanted to make the property over to his wife so that they could not touch it, or something like that. Mrs. Elkin had some money that Mr. Elkin's father had sent her at different times, and she had accumulated some little money by do

ing fancy work. He was after her frequently to turn that money over — him to help pay for the house, and she did it. She had spoken to me several times long before the property was deeded over. Mr. Elkin and his wife were living at Mount Pleasant and he was neglecting her. I went out there in a carriage and took her to my father's house, where she died. I saw Elkin after his wife's death. I saw him once at his house. He had three or four junk-dealers out there and was selling off the furniture and clothing and things of that kind. I took the plaintiff out there with me. She wanted some clothing of her mother's, but she said her father would not give it to her. He had a dress and a pair of shoes and some things that belonged to the children. I made him give them to the plaintiff. He was selling the children's clothing. I saw him three or four times after that within two or three weeks. I afterwards went out to the house in Mt. Pleasant and saw a note in Elkin's handwriting, in which it was stated, "Good-bye, Fred. I am going to leave town and not come back." I never saw him after that. I have tried to find out where he went. I wrote to different places. I wrote his father and tried to find out his whereabouts, but could not do it. Probably three or four years ago a friend of mine said he had been out to Chicago and saw him clerking in a shoe store.

36 I wrote to the postmaster in Chicago to find out whether he was there. I got a negative answer that it was not him. I heard that Abram Elkin at one time had been in the navy. At the time he left his children were at my father's house. He never asked for his children and never asked to live at that house. I do not know that he had any home at all anywhere after his wife's death except at Mount Pleasant. I have heard the Abram Elkin's parents were not living together; he told me that his father had left his mother. His mother visited my father's house on two or three occasions. She said she was stopping in Washington and did not expect to go to Philadelphia, but was going to New York or some other place. Elkin said nothing to me except that he was going to leave town. My sister told me that Mr. Elkin's father has sent her money. She said that her husband would sometimes get her letters and take the money out, and she had to go to work when she received mail that had any money in it and put it in her stocking.

On cross-examination the witness testified:

I received \$1,500.00 for this house. I cannot state how much of it I spent; I cannot tell how much more than \$598.00 I spent. I never filed an account in the orphans' court as executor; I never paid Elkin any money after the sale; I never saw him after the sale. I do not think I heard from him after he left town, shortly after his wife's death. I made this inquiry of the Chicago postmaster two or three years after he left town. I do not recollect whether I tried to find out where he was after the sale or not.

37 After her mother's death the plaintiff went to live at my father's house. My father died in 1880. After he died she lived with Mrs. Lowry.

Q. After the year 1881 did you ever pay Mrs. Rathbone out of any funds in your hands any money she was entitled to?

A. I cannot remember the date. In 1881 I filed a bill in equity, in which I stated that the Elkin children were without means of support. I do not know whether I had any money of theirs in 1881 or not. After Elkin departed, in 1876, I took possession of the property in dispute. I put a man there at a small figure to take care of the place, but afterwards had to put him out. Then I paid a man to take care of the property. I got \$10 from one tenant on the place; I got nothing from anybody else. All I got in three years was \$10.00. When Mrs. Rathbone came to see me she would say that I had money that belonged to her, and that she wanted it. I never told her that the will under which I sold gave me no right to sell; I never informed her; I do not know whether or not I told her that I had sold the property. Mrs. Hamilton took possession of the property after I sold it to her. I do not know that I ever gave the plaintiff any money after she became of age. I think I have bought things for her after she became of age. She became of age in 1881. She said she was of age and she had a right to have these things or something of that kind. I do not know what it was I gave her; I cannot state what I gave her after she became of age. I kept the \$1,500.00 at home after I received it. It seems to me that I had some of the money in the Freedmen's bank. I think that was in the panic of 1873. It was when the Freedmen's bank closed up. I had the money in bank a year. I had seven or eight hundred dollars in bank. I do not know when the

38 Freedmen's bank suspended. In 1872, when Mr. Elkin gave me a deed for this property, I do not remember whether I paid him anything for it or not. I suppose the \$5.00 mentioned in the deed passed through our hands just as a matter of form so as to make the property over to his wife. I may have passed the \$5.00 over to Mr. Elkin and had it passed back again, but I suppose that was the extent of the money that was furnished. I do not know how much money Mrs. Elkin gave her husband. She said that she got some from her father-in-law and some she worked for. I guess it was after she was married. She said that Mr. Elkin's father had sent her some money, and that he had sent her a sewing machine. She said that he sent her checks after the marriage. When these deeds were executed Mr. Elkin wanted to make the property over to his wife, and that was all there was of it. My matters as executor of Mrs. Elkin were in the hands of Col. Payne, and after he became auditor I placed them in the hands of J. Ambler Smith, and I proceeded according to their instructions. I never paid any of the purchase-money back to Mrs. Hamilton. When my father's real estate was sold in 1884 the 4 Elkin children were living with my sister. They had no means of support except the money paid me by Mrs. Hamilton. The amount received by them from the sale of my father's real estate was very small.

The defendant thereupon called as a witness MARY J. LOWRY, who, being duly sworn, testified as follows:

I am a sister of Mr. Calvert and of Mrs. Elkin. I live in New York city and have lived there since April, 1895.

39 Before that time I lived in Washington, on and off, all my lifetime. I knew Mr. and Mrs. Elkin and the children. I knew something of the transfer of the property from Mr. Elkin to Mrs. Elkin. Her husband made it over to her, and part of the money he got was what his father sent to her from Philadelphia. She was in need of things and she asked for money to educate and take care of the children, and he sent her money at different times. I know she came down and told us that her husband took the money from her to pay some of the notes on his property. I have seen several checks Mrs. Elkin received. She kept the money in her stocking. Mr. Elkin was a clerk in one of the departments, and after he left that place he used to sell peanuts and bananas. Afterwards he opened a little grocery store on the corner of 7th and L streets N. W. He failed there. He then went to the Arlington hotel as a watchman. It was about that time that his wife was taken sick and died. I never saw him more than once after his wife's death. He came to the house in June of that year. He wanted to stop at our house, but I told him from the treatment his wife had got at his hands I could not accommodate him, and that he would have to go elsewhere. He said that he was going away; that he did not want to stay in the city. He did not say where he was going. I never saw him after that. At the time of Mrs. Elkin's death the plaintiff was 12 years and two months old. The others were aged six, eight, and ten. After their mother's death I took care of them until the plaintiff was married. She was married seven or eight years ago. Harry Elkin died at my house. He was a cripple. One of the girls died in Portsmouth, Va. I had no aid in raising the 40 children except what my brother gave me. He would give me \$10.00, \$15.00, or \$20.00 for board for them, just as I wanted the money. I think he gave me about \$125.00 from the proceeds of the property he sold. The plaintiff knew the place was sold and she knew the money was coming from that sale. She talked about it and she told me so. My brother kept the children in shoes and clothes, and whenever they were sick he would get medicine for them and send for the doctor. The children were fed by me. They had no other means of support. Their father did not contribute to their support. I inquired about Mr. Elkin and wrote to his father in Philadelphia. The letter which I received in reply was an insulting one. I wrote to him and he sent back word that he had cast his son off; that he heard his son was married and that he and his wife had gone to England. "But the idea of his marrying and bringing those beggarly brats into the world for him to take care of, he could not and would not do it." That was four or five years after Mrs. Elkin died. There was no house on this place when Elkin got it from Quinter. The house was built afterwards. It was a two-story frame house, four rooms.

On cross-examination the witness testified as follows:

I saw Mr. Elkin last in June, 1876. He told me that he intended to leave the city. I never saw him after that. Four or five years later I wrote to his father. His father replied that he had heard something of him. I never heard a word since. After Mrs. Elkin's death I took the children and housed them and Mr. Elkin clothed them, and paid me in all about \$125.00. I know Mrs. Elkin gave her husband something to pay the notes he gave for the 41 building of the house. I do not know whose money paid for the ground. I do not know how long after he bought the ground he started to build the house. The checks Mrs. Elkin received were to her order. I saw four of them; one was for ten dollars, one for fifteen dollars, one for twenty dollars, and one for twenty-five dollars. I do not know of any other money. Mrs. Elkin's husband got that money; she gave it to him while he was building the house. It was given to her for the children, but he took it away from her. It was not given to her for her own use. I do not remember the date when it was given to her. I do not know whether Mr. Elkin, Senior, sent this money to Mrs. Elkin before 1869 or not; I do not remember. Mrs. Elkin used to do sewing. The plaintiff remained at my house until she was married in 1888; she was of age in 1885. During those years she stayed with me, but she took in some sewing.

The defendant thereupon called as a witness WILLIAM HOLMEAD, who, being duly sworn, testified as follows:

I reside at Mt. Pleasant. I knew Abram Elkin and his wife. I remember when she died. After her death I saw Elkin; he was selling out the bedding, clothing, children's clothing, and everything in the house to a lot of colored people. He told me the Calverts had taken his wife and children, and that he was going away. He said he was going to leave the city. He said he was going to leave his children with the Calverts. His feelings towards the Calverts were very bitter.

On cross-examination the witness states as follows:

Elkin did not say where he was going. He bought the land in dispute from my half sister, Ada Quinter.

42 The defendant thereupon called as a witness MARY J. LOWRY, who, being duly sworn, testified as follows:

In the May before Mrs. Lucy Elkin died Abram Elkin's mother came to our house. Abram Elkin and his wife were very intimate, in close conversation all the time. There was some trouble between Mr. Elkin, Senior, and his wife. They did not live together. The son took sides with his mother. When I made inquiry of Abram Elkin's father he informed me that his son had gone to England. I wrote to him two or three years after Mrs. Elkin died. It was before 1891. In his letter to me Solomon Elkin did not state from whom he had heard about his son. He stated that he heard the son had gone to England with his wife and mother. I never saw

Abram Elkin's mother before or after the time I saw her when Mrs. Lucy V. Elkin died. I knew she came from Philadelphia.

On cross-examination the witness stated:

That was the only time I ever saw Mrs. Elkin, Senior. I never heard from her since. I don't know whether she is living or dead. When I saw her Abram Elkin's mother was a settled woman, of middle age, in good health.

Whereupon defendant called as a witness FANNIE M. CALVERT, who, being duly sworn, testified as follows:

I am the wife of Frederick G. Calvert. I knew Mrs. Abram Elkin. I know my husband spent money on her children. I can't fix the time. It was for several years. I did the buying. When the children needed anything they were sent to their uncle 43 or Mrs. Lowry would make the request of him, and I would go and get what they needed, get a receipt and bring it home. What I bought was clothing. I may have told the plaintiff when she wanted some things that she couldn't get that the money Mr. Calvert had in his hands for the children was all expended. I remember when the plaintiff was married.

On cross-examination the witness stated:

I think I told the plaintiff at one time about the money being all gone. I didn't say what money. I think she was not of age. It is my impression the money was all gone before she became of age. I don't know where Mr. Calvert kept his money.

The defendant further called FRANCES R. HAMILTON, who, being duly sworn, testified as follows:

After I purchased this land I erected a barn there that cost \$700.00 and put a pump in the yard that cost \$128.00, and put fencing all around it that cost \$200.00. The house itself was nothing but a shell. I had it plastered and painted. I spent altogether in improvements on this property from 1879 down to the time suit was brought in 1891 about \$8,000.00. It fronts on the 14th Street road about 80 feet and runs back about 100 feet. The barn is built close to the house. Anybody going along the road can see the house, barn, fencing, and other improvements. Since 1885 I have not put any improvements on the house, but have tried to keep the house up—have tried to keep it from falling down. The barn and fences were erected before 1885.

Q. I want you to state clearly and distinctly what your claim is to the possession of this property.

A. I bought it and paid for it, and I claim it under all titles, because I bought it and have paid for it and thought I was 44 buying it right and proper. I worked 35 years hard for the money I paid for that place. Up to the time the suit was brought there was no attempt to interfere with my possession and title.

On cross-examination the witness stated as follows:

I never got any other deed for the property than the deed from Calvert, the executor. I did not claim the property under any other deed than the deed he gave me, but I thought he had got a proper deed and was a man who could give me a proper deed. I bought the property from Mr. Calvert, had a lawyer examine the title, and paid Mr. Calvert the purchase price. I went into possession, and that is the way I claim to be the owner of the property. That is all. Since 1879 I have lived there, and it is my home. I did not rent any portion of it out. When I first went there I cultivated the place, but I keep a dairy there now. I saw Mrs. Rathbone out there in 1885; the first or second week in September. I won't be sure about the month, but it was in 1885. She came out and said to me, Mrs. Hamilton, you don't know me. She said, You don't know Abbie Elkin. I answered, You have grown out of my memory. She then said, Mrs. Hamilton, did you buy this place? I answered that I did. She said, Who did you buy it from? I said, I bought it from Mr. Calvert. She said, I don't see why my uncle Fred. had any right to sell papa's property. I said to her, If I understand it right, it is not your father's. She said, Well, mamma's then. I said, I don't know anything about it; I had a lawyer attend to it; you had better go to him, and he will tell you all about it. That was the substance of the talk. That was before

45 she was married; it was in 1885. She said her name was

Abbie Elkin. She did not say that she did not know the property had been sold. She said she was getting a big girl now, and it was time she was getting some benefit.

Q. Did she say she had gotten any benefit before that?

A. She did not say.

My daughter died November 22nd, 1885. This conversation was between that date and the end of the year. I never saw her out there before. I never saw or heard of her any more until she entered the suit.

The defendant thereupon called as a witness MARY JANE HAMILTON, who, being duly sworn, testified as follows:

I am a daughter of the defendant and lived with her at the time she bought this property. She improved the property before she went there. She put window blinds, window sashes, plastering, painting, and roofing on the house and built a barn, a fence, and a well. Anybody going along the road could see the improvements.

And thereupon counsel for the defendant announced their testimony closed.

Thereupon the plaintiff offered the following evidence in rebuttal, and by leave of court, first had and obtained, the plaintiff offered in evidence a patent from the State of Maryland conveying the ground in dispute to Anthony Holmead, and proved by record evidence the regular descent of the title from Anthony Holmead to Ada Quinter, formerly Ada Holmead, the grantor of Abram Elkin.

The plaintiff thereupon called as a witness GRACE A. B. RATHBONE, who testified as follows:

46 I was 12 years old when my mother died. After that I lived with my grandfather until he died, in 1880. Between 1876 and 1880 my aunt, Mrs. Lowry, fed and housed me. Between 1876 and 1880 I received nothing directly from Fred. Calvert, but he had his wife get me some articles of clothing, but nothing else. He gave me nothing more than he could possibly help. After 1880 I lived with Mrs. Lowry; she boarded me. I staid with her off and on until 1888, when I married. During those eight years I received only a few things from Mr. Calvert. I do not remember receiving anything from him after I became of age. After I became of age I supported myself by dressmaking. I first learned from my cousin that the place had been sold. I remember visiting Mrs. Hamilton, but don't think it was as late as December, 1885. It was earlier. I went there because my uncle told me there was no money; that was before I went to see Mrs. Hamilton. I first learned that Mr. Calvert had no authority to sell this property when Mr. Milans filed this suit. He was the one who first informed me. After I learned that the executor had no power to sell I never received anything from Mr. Calvert. I was married in November, 1888. I saw the letter that Mrs. Lowry received from my grandfather. I saw when she tore it up. There was something in it to the effect that he did not know anything about my father; that he had heard that my father had left and gone to England with his mother and something about his being married again. I was then about eighteen years old. I saw my father's mother in Washington at the time my mother was dead. I never saw her after she left the house that day. I never heard from her again. My mother's doctor bill and my brother's doctor's bill have never been paid. I never received any money or cash from Mr. Calvert. He would purchase clothing for me once in a long time—maybe once a year. He never told me out of what money he was buying clothes for me. I never asked him what had become of the proceeds of this property.

On cross-examination the witness stated as follows:

When I went to see Mrs. Hamilton I went there to ask her about the property. Mr. Calvert said there was a mortgage on the property and I did not believe it, and I went to ask Mrs. Hamilton if there was a mortgage on it. She told me there was no mortgage on the property; that I could go to Mr. Carusi and find out. That wasn't all the conversation, but that was the main object of it. I don't remember whether I asked her if she had bought the property. I don't remember asking her what right Mr. Calvert had to sell my father's property or my mother's property. I testified at the first trial of this case. I then testified that I had heard that my mother made a will, but had never seen it until this suit was brought. I testified that Mr. Calvert informed me that some of the money had gone to pay off a mortgage. I testified at the first trial that he told me that he had lost several hundred dollars of the pro-

ceeds of sale which he had loaned to his brother. He said that some of the money had been loaned to his brother. I testified at the first trial that I received a pair of shoes from him, and I got an order from him for a pair of shoes, but I don't remember at what time I got them. I said I thought I was over 21 years of age when I got the shoes, but I don't know for certain that I was, for I don't know

48 the date. I have never been able to find out whether I was over 21 or not. I testified at the first trial that I was probably

over 21 when I got the order for the pair of shoes. I don't know for certain. I may have been over 21. I first learned of this sale when I went up on Capitol Hill; that was before 1880. My grandmother came out to see my father just a little while before my mother died and I saw her. I saw her again when my mother was dead, a month later, but I only saw her twice.

The plaintiff thereupon called as a witness Mrs. ELLIS, who, being duly sworn, testified as follows:

I know something about the money which Mr. Solomon Elkin gave to his daughter-in-law. Twice I had money that she gave me to keep for her. She told me she received it from Solomon Elkin. It was \$10.00 each time. She told me he sent her \$25.00 once to buy a sewing machine with, which she bought. On the other occasion she used it for her own purposes.

Q. What did she do with the money—the two \$10.00 bills?

A. I spent it for her in dry goods.

On cross-examination the witness testified:

Mrs. Elkin and I were raised together.

Thereupon the defendant, in surrebuttal, called as a witness A. A. LIPSCOMB, who testified in substance as follows:

Q. Mr. Lipscomb, were you present as counsel for the defendant at the first trial of this case?

A. Yes, sir; I was the counsel.

Q. I will ask you whether or not she testified at that time as follows:

49 "Thereupon counsel for defendant asked the witness if she did not know that her mother had made a will, and that her mother's brother, Frederick G. Calvert, was the executor thereof, and that he had sold the property and disposed of it to the defendant; to which question she answered that she heard her mother had made a will, but had never seen it until after this suit was brought; that she also heard the property had been sold to the defendant and had called on her uncle, Frederick G. Calvert, to find out what had become of the proceeds of sale and was informed by him that most of it had gone to pay off a mortgage on the property, and that he had lost several hundred dollars of the proceeds of sale which he had loaned to his brother; that he gave that as an excuse for having no money for her; that on showing him how her shoes were worn out she obtained from him an order for a pair of shoes, and that she obtained from him at other times after her mother's death various small articles."

Q. Did she in substance testify as I have read ?

A. In substance as you have read. The testimony was embodied in a bill of exceptions on the part of Mr. Colbert.

Q. This was prepared by her counsel ?

A. By her counsel, and to that I assented as being the evidence, as we then recollect it, of this witness, and there it is printed.

Cross-examination :

Q. Do you recollect that you and I had several conferences in relation to the preparation of that bill of exceptions ?

A. Yes, sir ; we did.

Q. The testimony was not taken by a stenographer ?

50 A. No, sir.

Q. It was the result of our joint recollection of what had taken place ?

A. Unquestionably.

Q. You do not pretend to say those were the words of the witness ?

A. I do not. I only say that what Mr. Worthington has read was what you and I agreed she had testified to.

Q. The substance of what she testified to ?

A. Yes, sir ; that was the substance of it.

Redirect examination.

By Mr. WORTHINGTON :

Q. Is it now your recollection that that is the substance of what she said ?

A. I am positive about one item now, because Judge Bradley, who was then presiding in the case, asked the witness some questions himself. I am positive about the receipt of the pair of shoes after reaching her majority. I conducted the cross-examination of the witness, and am absolutely positive about that portion of her testimony.

By Mr. WORTHINGTON :

Q. And that she said she did not know whether she was of age or not when she received them, but that she probably was ?

A. Yes ; the other counsel was present, and I suppose his recollection will agree with mine about that.

And thereupon counsel for the plaintiff and defendant both announced their testimony closed.

And thereupon counsel for the plaintiff moved the court to instruct the jury on the whole evidence to return a verdict for 51 the plaintiff. To the granting of this instruction the defendant, by her counsel, objected, but the court overruled the objection and granted the instruction. To this ruling the defendant, by her counsel, then and there and before the jury retired, excepted, and prays the court to sign this her bill of exceptions,

29 which is done accordingly, now for then, this 5th day of February, A. D. 1896.

L. E. MCCOMAS, [SEAL.]
Associate Justice.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 51, inclusive, to be true copies of originals in cause No. 31827, at law, wherein Grace Abbie B. Rathbone is plaintiff and Frances Rebecca Hamilton is defendant, as the same remain upon the files and records of said court.

Seal Supreme Court of the District of Columbia my name and affix the seal of said court, at the city of Washington, in said District, this 21st day of February, A. D. 1896.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 554. Frances Rebecca Hamilton, appellant, vs. Grace Abbie B. Rathbone. Court of Appeals, District of Columbia. Filed Mar. 3, 1896. Robert Willett, clerk.

30

WEDNESDAY, April 22d, A. D. 1896.

FRANCES REBECCA HAMILTON, Appellant, }
vs. } No. 554.
GRACE ABBIE B. RATHBONE.

The argument in the above-entitled cause was commenced by Mr. A. A. Lipscomb, attorney for the appellant.

THURSDAY, April 23d, A. D. 1896.

FRANCES REBECCA HAMILTON, Appellant, }
vs. } No. 554.
GRACE ABBIE B. RATHBONE.

The argument in the above-entitled cause was continued by Mr. A. A. Lipscomb, attorney for the appellant, and by Messrs. M. J. Colbert and George E. Hamilton, attorneys for the appellee, and was concluded by Mr. A. S. Worthington, attorney for the appellant.

31

FRANCES REBECCA HAMILTON, Appellant, }
vs. } No. 554.
GRACE ABBIE B. RATHBONE.

Opinion of Court.

Mr. Chief Justice ALVEY delivered the opinion of the court: This case has been in this court on a former appeal, and the de-

cision then made is reported in 4 App. D. C. 475. The facts of the case are there set out, and it is only necessary to refer to them here so far as it may be required to an understanding of the questions presented on this appeal.

At the conclusion of the trial below, and upon the whole evidence produced, the court, at the request of the plaintiff, instructed the jury that the verdict should be for the plaintiff, and such verdict was accordingly rendered and the defendant excepted, and has prosecuted this appeal.

In respect to the instruction given, there are three errors assigned. 1st. That the court should have left the question to the jury to determine, whether the conveyance of the land from Elkins, the husband, to Calvert, and by the latter to Mrs. Elkins, the wife, under whom the plaintiff claims, was founded upon a valuable consideration, and therefore invested the wife with a statutory separate estate, with power to will the same. 2d. That there was error in holding that there was no matter of fact for the consideration of the jury upon the question of the life or death of Abram Elkins, the tenant by the courtesy; and, 3d. That there was error in holding by the court that there was no sufficient evidence to support an estoppel as against the plaintiff's right to recover, upon the ground of the alleged receipt of some portion of the proceeds of the sale of the land in controversy by the plaintiff, and her failure to disaffirm the sale made by the executor under the power in her mother's will, within a reasonable time after attaining the age of majority.

1. With respect to the first of these questions, but little need be said. It has already been held by this court, on the former appeal, that the conveyance of the land to the wife by the husband, through a third party as a mere intermediary, was a gift or conveyance from the husband to the wife, within the meaning of the statute; and there is nothing shown in the present record to change in any manner the former declared effect of the conveyances. It is not pretended that there was any consideration passed from Calvert to Elkins, or from Mrs. Elkins to Calvert, for the conveyances. The facts of the transaction are stated by Calvert, a party to the deeds, and who was called and examined as a witness in the case by the defendant. The small amounts of money referred to in the evidence, that were received by Elkins, the husband, from his wife, were given him to aid in paying for the building of the small house that was erected on the land.

2. The question whether Elkins, the tenant by the courtesy, was dead or alive, at the time of the bringing of the present action of ejectment, in the absence of any direct or positive evidence of the fact, the one way or the other, is determined by presumption raised by law. The principle uniformly maintained is, that where a party has been absent seven years without having been heard of, the presumption is that he is then dead, though there is no presumption as to the time when he died. *Davie v. Briggs*, 97 U. S. 628. The principle, with its limitations and qualifications, is found clearly stated in the works of both Greenleaf and Taylor on Evidence. In the first of these works, that of Greenleaf, sec. 41, the principle is

stated to be, that "where the issue is upon the *life or death* of a person once shown to have been living the burden of proof lies upon the party who asserts the death. But after the lapse of *seven years*, without intelligence concerning the person, the presumption of life ceases, and the burden of proof is devolved on the other party. This period was inserted, upon great deliberation, in the statute of bigamy, and the statute concerning leases for lives, and has since been adopted, from analogy, in other cases." The principle is stated in substantially the same terms in 1 Taylor on Evidence, sec. 200 (8th edition), and also in Stephen on Evidence, ch. 14, art. 99. The evidence shows, as well that produced on the part of the defendant, as that produced on the part of the plaintiff, and about which there is no dispute, that soon after the death of his wife, in 1876, Abram Elkins, the surviving husband, left his domicile in this District and went to parts unknown to his children, or to their relations in whose care they were left; and he left them in a state of utter destitution and dependence. The proof shows that repeated inquiries have been made to ascertain his whereabouts, or whether he was dead or alive, and that no tidings of him could be or has been obtained. To the time of bringing this action, his absence had continued for about fifteen years, and to the present time, for a period of about twenty years; and no person here appears to know whether he be dead or alive. Both duty to and the natural affections of a parent for his helpless children certainly constituted the strongest possible incentive to his return, or at least to some correspondence with his children, or with those having the care of them. But no certain or reliable intelligence whatever has been received of him. In view of these facts, it is but a charitable construction of them, as well as an established legal presumption arising thereon, that the party was dead after the lapse of seven years from the time of his leaving this District; and the court below was quite right in acting upon that presumption. Upon the facts in evidence, the burden was cast upon the defendant of producing evidence to rebut the presumption of death; but no such evidence was offered.

3. Then, with respect to the third question, that of an estoppel, the evidence furnishes no foundation for its support.

The evidence shows, and about which there is no dispute, that the plaintiff was born in March, 1864, and was one of four children left by her mother, who died in 1876. The property in controversy was sold to the defendant by the executor of Mrs. Elkins for \$1,500, and at that time the plaintiff was about fifteen years of age. Of the proceeds of sale of the property some portion was applied by the executor to the support and maintenance of the plaintiff before she arrived to the age of majority. It was attempted to be shown that the plaintiff had been furnished by Calvert, the executor, with a pair of shoes after she arrived at age; but whether she was of age at the time is left in great doubt and uncertainty. Calvert himself, a witness produced on the part of the defendant, says: "I do not know that I ever gave the plaintiff any money after she became of age. I think I have bought things for her after she became of age. She

became of age in 1881. She said she was of age and she had a right to have these things, or something of that kind. I do not know what it was I gave her; I cannot state what I gave her after she became of age." The witness states that the plaintiff became of age in 1881, but if he intended to say that she attained the age of twenty-one years in 1881, he must have been mistaken, as the other witnesses, including the plaintiff herself, who testified as to the age of the plaintiff, say that her mother and father were married in 1863, and that she was born in 1864, and, consequently, she did not attain the age of twenty-one years until 1885. She says that the last article furnished her by Calvert, the executor, was a pair of shoes, but she cannot be positive whether she was then of the age of twenty-one years or not. The suit was brought in June, 1891, the plaintiff then being about twenty-seven years of age.

It is a settled principle that estoppels *in pais* are not applicable to infants, and even a fraudulent representation as to capacity, made by an infant will not be taken as an equivalent for actual capacity. *Sims v. Everhardt*, 102 U. S. 300. And where a deed in relation to real estate is made by an infant, the preponderance of authority, would appear to hold, that mere silence or inactivity, after becoming of age, continued for a period less than that prescribed by the statute of limitations, unless accompanied by affirmative acts, manifesting an intention to assent to the deed, will not bar the infant's right to avoid the deed. *Sims v. Everhardt, supra*. But in this case, the question is, not whether there has been any affirmation or disaffirmance of a *voidable* deed or conveyance of an infant, after such infant had attained full age, but whether there has been such an adoption or ratification by equitable construction of an entirely *void sale and conveyance* of an infant's estate, made by a third party, as executor or trustee, as will operate by way of an estoppel as against the owner—an infant at the time of the sale and conveyance made—by reason of the fact that such infant owner has received from the executor or trustee some portion of the proceeds of sale? The equitable estoppel set up, to be effective as a bar to the right of recovery in an action of ejectment, must be coextensive with the original interest and title of the plaintiff. In other words, the ground of estoppel must apply to and constitute a full and complete answer to the plaintiff's right to recover the possession of the entire interest in the land sued for. How a court of equity might consider and deal with the facts of the case, is a question that we are not called upon to determine in this action. The attempt here is, to set up and make available, as a defense to an action of ejectment, what is supposed to be an equitable estoppel, founded solely upon the fact that the plaintiff, while an infant, had applied for her support and maintenance, some portion of the purchase-money received for the property sold by the executor. It is not pretended that the plaintiff, by any act, conduct or admission of hers, caused or induced any change in the position of the defendant, to her prejudice. At the time of the sale to and the payment of the purchase-money by the defendant, the plaintiff was only about fifteen years of age, and had no participation whatever in the making of the sale. That

was a transaction between Calvert, acting under a supposed power which proved to be utterly void, and the defendant, the purchaser of the property under such power.

There are many cases found in the books where attempts have been made to preclude parties from asserting their rights to property, which had been illegally disposed of while they were under age or other disability, by force of what is denominated an equitable estoppel. But it is only in very peculiar cases and under very strong circumstances, and where the proof is clear and unmistakable, that such defenses can be maintained, and especially as a defense to an action at law to enforce a clear legal right. Otherwise, the infancy or other disability of the party whose property has been illegally disposed of, would afford him no such adequate protection as is contemplated by the law.

It has, however, been laid down in many cases, as being within the principle of equitable estoppel, that where a party, after 33 he attains full age, and is under no disability, and acts with full knowledge of all the facts, accepts the proceeds of an unauthorized sale of his property made while he was a minor, is estopped to dispute the validity of the sale. *Goodman v. Winter*, 64 Ala. 410; *France v. Hayner*, 67 Iowa, 139; *Schenck v. Saulter*, 73 Mo. 46; *Moore v. Hill*, 85 N. C. 218. And so it has been held, that the reception and substantial enjoyment of the benefits of the transaction, *after reaching majority*, such as collecting the dividends or interest, or receiving the principal, or other act totally inconsistent with an honest intention to disaffirm or reject the contract, will operate as an estoppel. *Schouler*, Dom. Rel., sec. 435, page 657. But a party who receives money while under age, from the sale of lands, is not estopped to claim the land on attaining his majority. *Gillespie v. Nabors*, 59 Ala. 441. And where land was sold for the purpose of raising funds to educate an infant, with the consent of the infant and her mother, and the money was used for such purpose, it was held, that the infant, after coming of age, was not estopped to claim the land. *Schnell v. Chicago*, 38 Ill. 383. And it has been repeatedly held, that infants whose property has been sold without legal authority by parents, guardians, or any one else, can recover the property and thus avoid an illegal sale of land, without first tendering the price to the purchaser, leaving him, however, to recover back such consideration as may remain within his reach. *Schouler*, Dom. Rel., secs. 444, 446; *Pitcher v. Laycock*, 7 Ind. 398; *Cressinger v. Welch*, 15 Ohio, 156; *Green v. Green*, 69 N. Y. 553; *Besinger v. Wharton*, 27 Gratt. 857.

In the case of *Russ v. Alpaugh*, 118 Mass. 369, a tenant by the courtesy, being in possession of the premises, executed a mortgage, with full covenants of warranty, which was duly acknowledged and recorded, and which was foreclosed, and under which the defendant claimed title; and the tenant by the courtesy having died, leaving assets of equal value at the time with the demanded premises, and which assets descended or were distributed to the heirs claiming title under the mother, it was held (Mr. Ch. J. Gray delivering the opinion of the court), that the children were not estopped by

the deed or mortgage of the father, and the receipt of the assets of his estate, to assert their title to the land by inheritance from the mother.

The portion of the proceeds of sale of the property that was expended for the board and clothing of the plaintiff by her uncle, the executor, was expended during her minority, and the proof does not show, with any degree of certainty, what portion of the proceeds of sale was thus expended. The only article about which there could be any doubt as to the time when it was supplied is a pair of shoes, and in regard to that the proof wholly fails to fix the time with any certainty. That article, however, even supposing it to have been supplied by the uncle after the plaintiff arrived at age, was too insignificant to be made the foundation of an equitable estoppel to preclude the plaintiff the right to recover her interest in the land sued for. There is no sufficient basis shown for the application of the principle of equitable estoppel.

The cases relied on by the defendant, of *Dickerson v. Colgrove*, 100 U. S. 578, and *Kirk v. Hamilton*, 102 U. S. 68, do not apply to this case. They were cases of the application of the doctrine of equitable estoppel, it is true, but those cases did not relate to the property of infants, nor did they involve in any manner the consideration of the doctrine of adoption or ratification of illegal sales of infants' real estate, after the infant owner had attained full age.

This is doubtless a hard case upon the defendant. But the deeds and will relating to the title were all matters of public record, and it was incumbent upon the defendant, as it is upon all other purchasers, to make due inquiry as to the title of the property purchased, before parting with the purchase-money. *Kirby v. Tallmadge*, 160 U. S. 379.

We find no error in the instruction given by the court below, and the judgment must therefore be affirmed.

Judgment affirmed.

FRANCES REBECCA HAMILTON, Ap-
pellant,
vs.
GRACE ABBIE B. RATHBONE. } No. 554. April Term, 1896.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel; on consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. CHIEF JUSTICE ALVEY.

June 1, 1896.

35 In the Court of Appeals of the District of Columbia.

FRANCES REBECCA HAMILTON, Ap-
pellant,
vs.
GRACE ABBIE B. RATHBONE, Ap-
pellée.

April Term, 1896. No. 554.

And now comes the appellant, by her attorneys, Messrs. Worthington, Lipscomb, and Walker, and moves the court for a writ of error removing the said cause to the Supreme Court of the United States, and in support thereof files an affidavit as to the value of the property in controversy.

A. S. WORTHINGTON,
A. A. LIPSCOMB,
PHILIP WALKER,
Attorneys for the Appellant.

Endorsed: April term, 1896. No. 554. Frances R. Hamilton *vs.* Grace A. B. Rathbone. Motion for writ of error to Supreme Ct. U. S. Court of Appeals, District of Columbia. Filed Jun- 11, 1896. Robert Willett, clerk. Worthington, Lipscomb & Walker, att'ys for appellant.

36 In the Court of Appeals of the District of Columbia.

FRANCES REBECCA HAMILTON, Ap-
pellant,
vs.
GRACE ABBIE B. RATHBONE, Ap-
pellée.

April Term, 1896. No. 554.

DISTRICT OF COLUMBIA, *ss*:

I, William Holmead, having been first duly sworn, on oath say that I am a resident of the District of Columbia, residing in the immediate vicinity of the land at issue in this cause; that I am fully acquainted with the value of property in that portion of the District of Columbia; that in my opinion the land at issue herein is worth at the present time forty cents per square foot throughout and one dollar per square foot for that portion within one hundred and fifty feet of the street (14th).

WILLIAM HOLMEAD.

Subscribed and sworn to before me this 9th day of June, A. D. 1896.

RUTLEDGE WILLSON,
[NOTARIAL SEAL.] *Notary Public.*

Endorsed: 554. In the Court of Appeals of the District of Columbia, April term, 1896. # 554. Frances Rebecca Hamilton, appellant, *vs.* Grace Abbie B. Rathbone, appellee. Affidavit of Wm. Holmead as to value of property. Court of Appeals, District of Columbia. Filed Jun- 11, 1896. Robert Willett, clerk. Worthington, Lipscomb & Walker, attorneys for appellant.

THURSDAY, June 11th, A. D. 1896.

FRANCES REBECCA HAMILTON, Appellant,
 vs.
 GRACE ABBIE B. RATHBONE. } No. 554.

On motion of Mr. Philip Walker, of counsel for the appellant in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed on giving bond in the sum of three thousand dollars.

38 Know all men by these presents that we, Frances Rebecca Hamilton, as principal, and William Holmead, as surety, are held and firmly bound unto Grace Abbie B. Rathbone in the full and just sum of three thousand dollars, to be paid to the said Grace Abbie B. Rathbone, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between said Frances Rebecca Hamilton, appellant, and said Grace Abbie B. Rathbone, appellee, a judgment was rendered against the said Frances Rebecca Hamilton, and the said Frances Rebecca Hamilton having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Grace Abbie B. Rathbone, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Frances Rebecca Hamilton shall prosecute said writ of error to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

her
 FRANCES REBECCA x HAMILTON. [SEAL.]
 mark.
 WILLIAM HOLMEAD. [SEAL.]

Sealed and delivered in the presence of—

A. A. LIPSCOMB,
 PHILIP WALKER,
 As to mark of Frances R. Hamilton.

R. W. DUTTON,
 F. L. WILLIAMS,
 As to Wm. Holmead.

Approved by—
 R. H. ALVEY, Ch. Justice.

The surety, Wm. Holmead, is satisfactory.

G. E. HAMILTON,

[Endorsed:] No. 554. Frances Rebecca Hamilton *vs.* Grace Abbie B. Rathbone. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Jun- 27, 1896. Robert Willett, clerk.

39 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, between Frances Rebecca Hamilton, appellant, and Grace Abbie B. Rathbone, appellee, a manifest error hath happened, to the great damage of the said appellant, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal Court of Appeals, District of Columbia.]

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

40 UNITED STATES OF AMERICA, *ss*:

To Grace Abbie B. Rathbone, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Frances Rebecca Hamilton is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 27th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

R. H. ALVEY,
*Chief Justice of the Court of Appeals
of the District of Columbia.*

Service acknowledged June 27th, 1896.

H. G. MILANS,
HAMILTON & COLBERT,
For Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jun-
27, 1896. Robert Willett, clerk.

41 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and type-written pages, numbered from 1 to 40, inclusive, contain a true copy of the transcript of the record and proceedings of said Court of Appeals in the case of Frances Rebecca Hamilton, appellant, vs. Grace Abbie B. Rathbone, No. 554, April term, 1896, as the same remain- upon the files and records of said Court of Appeals.

In testimony whereof I hereunto sub-
Seal Court of Appeals, scribe my name and affix the seal of said
District of Columbia. Court of Appeals, at the city of Wash-
ington, this 2d day of July, A. D. 1896.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,345. District of Columbia Court
of Appeals. Term No., 206. Frances Rebecca Hamilton, plaintiff
in error, vs. Grace Abbie B. Rathbone. Filed July 27th, 1896.

